

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1258 of 1997

in

SPECIAL CIVIL APPLICATION No 7082 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMANBHAI SHANABHAI PATEL

Versus

NADIAD TALUKA PANCHAYAT

Appearance:

MR SURESH M TRIVEDI for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

Date of decision: 07/10/97

ORAL JUDGEMENT (C.K.THAKKER J.)

This appeal is directed against an order passed by the learned Single Judge summarily dismissing Special

The appellant was the President of Nadiad Taluka Panchayat, Nadiad (respondent no.1 herein). No confidence was moved against the appellant which was passed by all the members present at the meeting. It may be noted that out of 34 members, at the time of voting, 31 remained present and all of them voted in favour of 'no confidence motion'. In other words, all the members present at the meeting expressed no confidence in the appellant.

It was contended on behalf of the appellant that the procedure prescribed under the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act") and Gujarat Panchayats (Procedure) Rules, 1997 (hereinafter referred to as the "Procedure Rules") had not been complied with.

An appeal was filed against the said order under Sec.259 of the Act, wherein the Government held that notice issued was in consonance with the provisions of the Act and the Rules. Since the meeting was not called by the appellant, the District Development Officer who was competent Authority issued a direction to the Taluka Development Officer to hold meeting which was done and accordingly the motion was passed. The action was, therefore, legal and valid. The said order was challenged by filing the above petition which also came to be summarily dismissed.

The learned counsel for the appellant contended that the procedure was not followed inasmuch as notice said to have been issued was never received by the appellant. Now, the Government has recorded a finding that notice issued to the appellant was received by him. Instead of calling the meeting in accordance with law, he approached a civil court by filing a suit and obtained ad.interim relief. When ad.interim relief came to be vacated, the meeting was directed to be called by the District Development Officer and no confidence motion was passed. We, therefore, do not see any substance in the submission that the notice was not received by the appellant.

It was then contended that the competent authority under the Act and the Rules is District Development Officer and only he could have called the meeting. A meeting called by Taluka Development Officer was contrary to law and as it was inconsistent with the provisions of the Act and Rules, the entire action was

bad in law. For the said purpose, reliance was placed on decisions of Barium Chemicals Ltd. and another vs. Company Law Board and others, AIR 1967 SC 295 and Benoari Lal Sarma vs. Emperor, AIR 1943 Cal 285. We are afraid the ratio laid down in the above decisions does not help the appellant in any manner. It is settled law that power must be exercised by the authority on whom it is conferred. But at the same time, exercise of substantive power and performance of ministerial functions in accordance with the decision taken by the competent authority are two different things. In the instant case, in our opinion, the learned Single Judge is right in observing that the decision was taken by the Competent Authority i.e. by the District Development Officer and the Taluka Development Officer was directed to hold the meeting as per the direction issued by District Development Officer. In our opinion, the former was substantive order whereas the latter was merely ministerial function and there was no delegation of power by District Development Officer to Taluka Development Officer. There was no sub-delegation either. The second contention has also no force.

Finally, the appellant-petitioner has invoked extra ordinary powers of this court under Art.226 of the Constitution. When out of 34 members, 31 members were present and all of them voted against the appellant and in favour of no confidence motion, in our opinion, by not exercising extra ordinary powers in favour of the appellant, the learned Single Judge has not committed any error of law and the Letters Patent Appeal deserves to be dismissed and is accordingly dismissed.

Dt. 7.10.1997. (C.K.THAKKER J)

(MISS R.M.DOSHIT J)